UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte ALI N. SALEH, H. MICHAEL ZADIKIAN, ZAREH
BAGHDASARIAN, and VAHID PARSI

_____

Appeal 2009-006100
Application 09/899,962
Technology Center 2400

_____

Before: LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP,
and JAMES R. HUGHES, *Administrative Patent Judges.*

BARRY, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1-
46. We have jurisdiction under 35 U.S.C. § 6(b).

INVENTION

The invention at issue on appeal "provides for restoration of paths
between zones, where the zones include a number of nodes. A zone can
have a source node or the zone can have a destination node." (Spec. 2.)
"[T]o reduce the time to restoration of failed links between a source and a
destination node, a determination is made as to alternative routes that may
exist between nodes." (*Id.* at 3.)

ILLUSTRATIVE CLAIM

46.   A method for restoring a path in a communication system
between zones comprising:
        establishing an inter-zone link with a first border node of
a source zone with a second
        border node of an destination zone, wherein the source
zone and the destination
        zone execute separate copies of a topology distribution
algorithm;
        identifying an inter-zone link failure between the source
zone and the destination zone;
        identifying a pre-planned alternative route;
        informing a node in the destination zone of the pre-
planned alternative route;
        informing a node in the source zone of the pre-planned
alternative route; and
        providing communication between the destination zone
and the source zone via the preplanned alternative route.

REFERENCES

Houji   US 5,832,197   Nov. 3, 1998
Iwata   US 6,026,077   Feb. 15, 2000
Ebata   US 6,708,209   Mar. 16, 2004

REJECTIONS

CLAIMS 1-46 STAND REJECTED UNDER 35 U.S.C. § 103(A) AS BEING

UNPATENTABLE OVER IWATA, HOUJI, AND EBATA.

FINDINGS OF FACT

Iwata describes its invention as "a failure restoration system that performs routing to an alternate path across a network for partially releasing a connection setup in a main path which has encountered a failure by means of previously determining the alternate path." (Col. 1, ll. 6-10.)

Houji describes its invention as "an alternate routing method which does not require a significant amount of network resource for reserving multiple alternate paths." (Col. 1, ll. 32-35.)

Ebata describes its invention as "a network system [that] has a plurality of networks each having a policy server and which performs by using the policy server of each network the QoS [i.e., quality of service] control on a communication extending to two or more different networks." (Col. 1, ll. 61-65.)

CLAIM GROUPINGS

Based on the Appellants' arguments, we will decide the appeal of claims 1-40, 42, and 43 on the basis of claim 1 alone; the appeal of claims 41 and 44 on the basis of claim 41 alone; and the appeal of claim 46 separately. *See* 37 C.F.R. § 41.37(c)(1)(vii).

REPRESENTATIVE CLAIM 1

The issue before us is whether the Examiner erred in finding that the combined teachings of Iwata, Houji, and Ebata would have suggested establishing a link between a source zone and a destination zone, wherein the link meets service requirements between the source and destination zone, and identifying a pre-planned alternative route, wherein the route also meets the service requirements, as required by representative claim 1.

ANALYSIS

"The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art." *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)). Furthermore, "[a]ll of the disclosures in a reference must be evaluated for what they fairly teach one of ordinary skill in the art." *In re Boe*, 355 F.2d 961, 965 (CCPA 1966)).

Here, the Examiner's finding that Iwata establishes an inter-zone link between a node of a source zone and a node of a destination zone and identifies a pre-planned alternative route between the source and destination zones (Ans. 4) is uncontested. "Silence implies assent." *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 572 (1985).

The Examiner also finds that "[i]n a method for restoring a path, Houji suggests or discloses wherein the preplanned alternative route meets class of service requirements between the source zone and the destination zone [see abstract, figs.1-2, and col.2, ln.46 - col.4, ln.38]." (Ans. 4-5.)

For its part, Figure 2 of Houji "is a flowchart illustrating a connection establishment routine . . . ." (Col. 2, ll. 38-39.) "[A]ssuming that user terminal U1 wishes to establish a connection to user terminal U2 (col. 2, ll. 54-55), the reference describes the connection establishment routine as follows:

> In FIG. 2, node N1 begins a connection establishment routine, at step 20, in response to a connection request from the source terminal U1 by sending signaling messages to adjacent nodes N2 and N3 (step 21). The connection request specifies a desired value of one of QOS (quality of service) parameters . . . . Each of these signaling messages requests multiple paths from source node N1 to destination node N5 via intermediate nodes N2, N3, N4 and N7 with the user's specified QOS parameter set to lowest level.

> [T]here are four available paths P1 to P4 that can be used to reach from node N1 to node N5, with P1 extending through node N2, P2 through nodes N2 and N4, P3 through nodes N3, N7 and N4, and P4 through nodes N3 and N7. . . .

> [F]low proceeds from step 22 to step 23 where node N1 establishes paths P1 to P4 of the minimum QOS value to the destination node N5.

> At step 24, source node N1 selects one of the established paths, and sends a signaling message to one of more nodes located on the selected path in order to request that the QOS parameter of the selected path be increased from the minimum value to the user-specified value. If path P1 is selected, the signaling message will be sent to node N2. Flow proceeds to step 25 to determine whether the request from node N1 is

> accepted by node N2. If it is, flow proceeds from step 25 to
> step 26 to establish a connection between source user terminal
> U1 and destination user terminal U2 via the selected path P1 . .
> . .

(Houji, Col. 2, l. 54 – col. 3, l. 26.)

In summary, Houji establishes a link P1 between a source node N1

and a destination node N5. Furthermore, the link meets the user-specified

QOS service requirements. When combined with Iwata's establishing of an

inter-zone link between a node of a source zone and a node of a destination

zone, the combined teachings of the references would have suggested

establishing a link between a source zone and a destination zone, wherein

the link meets service requirements between the source and destination zone.

For its part, Figure 3a of Houji "is a flowchart illustrating a protection

switching routing . . . ." (Col. 2, ll. 40-41.) The reference describes the

latter routine as follows.

> It begins at step 30 if a link failure occurs in the working path.
> The following description will proceed by assuming that
> working path P1 has failed on the link between nodes N2 and
> N5 . . . . Flow proceeds to step 31 to check to see if the
> reserved paths P2 to P4 are normal and available for use. This
> is done by sending confirmation messages from node N1 to
> adjacent nodes N2 and N3. If acknowledgment messages are
> returned from these nodes, any of these reserved paths can be
> used instead of the faulty path P1. If such acknowledgment
> messages are received, the decision at step 31 is affirmative and
> flow proceeds to step 32 to select one of the available paths and
> send a signaling message to the adjacent node on the selected
> path requesting the alteration of its QOS parameter from the
> minimum value to the user-specified value. If the request is
> accepted (step 33), flow proceeds to step 34 to reestablish the
> connection between user terminals U1 and U2 via the newly
> selected path . . . .

(Col. 3, l. 51 – col. 4, l. 2.)

In summary, Houji identifies a reserved path between the source node N1 and the destination node N5, wherein the path meets the user-specified QOS service requirements. When combined with Iwata's identifying of a pre-planned alternative route between the source and destination zones, the combined teachings of the references would have suggested identifying a pre-planned alternative route, wherein the route also meets the service requirements between the source and destination zone.

The Appellants argue that "[t]he distinction here is one of an *a priori* determination, such as the pre-planned alternative route in [Appellants'] claim 1, as opposed to an *a posteriori* determination, taught in Houji." (Reply Br. 19.)

"[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324, (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184, (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321(Fed. Cir. 1989)).

Here, claim 1 requires pre-planning an alternative, a feature disclosed by both Iwata and Houji. The representative claim does not require that the route meet service requirements *a priori*. It merely requires identifying a pre-planned route that meets the service requirements before it is established as the replacement link. As aforementioned, the latter reference selects a path that meets the user-specified QOS service requirements.

Therefore, we *conclude* that the Examiner did not err in finding that that the combined teachings of Iwata, Houji, and Ebata would have suggested establishing a link between a source zone and a destination zone, wherein the link meets service requirements between the source and

destination zone, and identifying a pre-planned alternative route, wherein the route also meets the service requirements, as required by representative claim 1.

REPRESENTATIVE CLAIM 41

The issue before us is whether the Examiner erred in finding that Iwata identifies an intra-zone failure within at least one of a source zone and a destination zone, as required by representative claim 41.

ANALYSIS

The Examiner finds that "Iwata discloses identifying an intra-zone failure [col. 10, ll. [sic] 66 through col. 11, ll. [sic] 27 and col1. [sic] 12, ll.40-62] in addition to an inter-zone link failure . . . ." (Ans. 9.) The Appellants admit that "Iwata mentions 'a case where a failure is detected within the peer group PG-B (702)' in FIG. 9. Iwata, 11:15-17." (Reply Br. 24.) They argue "[h]owever, this failure is within a peer group that is neither a source zone nor a destination zone" (*id.*); "[r]ather, PG-B 702 is an intermediary peer group." (*Id.* at 25.)

The question of obviousness is "based on underlying factual determinations including . . . what th[e] prior art teaches explicitly and inherently . . . ." *In re Zurko*, 258 F.3d 1379, 1383 (Fed. Cir. 2001) (citations omitted).

Here, Figure 1 of Iwata follows in pertinent part.
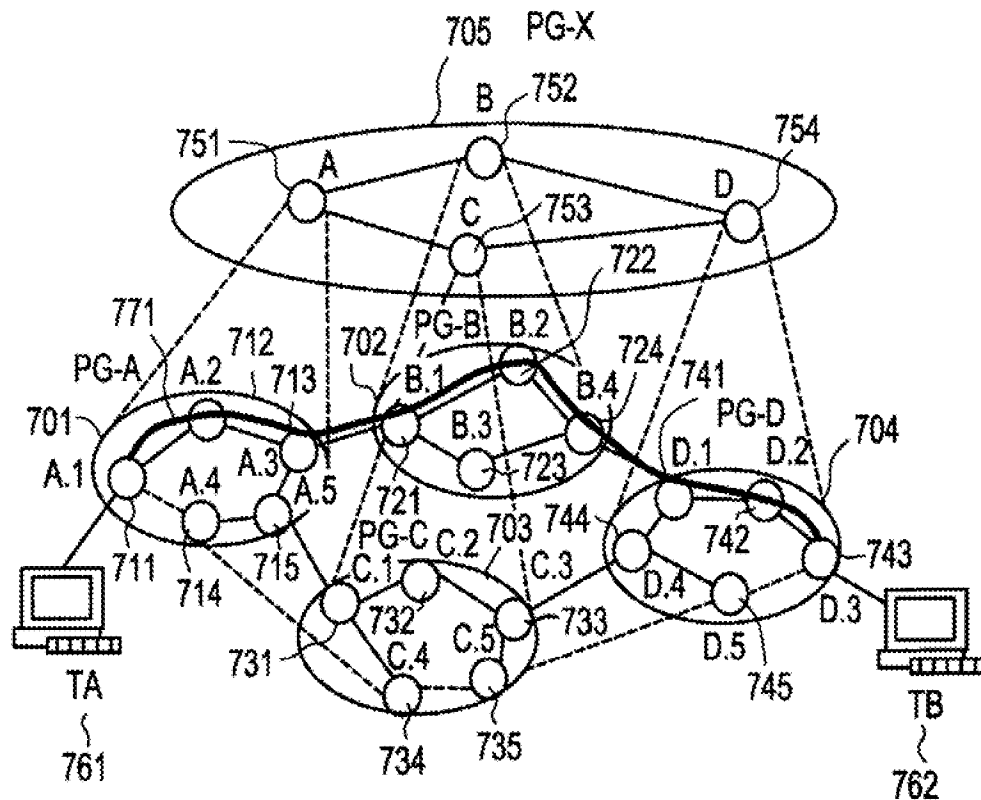
"FIG. 1 is a diagram for use in describing routing operation according to a first embodiment of the present invention [of Iwata] . . . ." (Iwata, Col. 2, ll. 46-47.)

The Figure shows that the zone in which the failure is detected, viz., PG-B 702, is a source zone or a destination zone *vis-à-vis* zones PG-A 701 and PG-D 704. More specifically, when data are being transferred from left-to-right along route 771 of Figure 1, PG-B is a destination zone for PG-A and a source zone for PG-D. Conversely, when data are being transferred from right-to- left along the same route PG-B is a destination zone for PG-D and a source zone for PG-A.

Therefore, we *conclude* that the Examiner did not err in finding that Iwata identifies an intra-zone failure within at least one of a source zone and a destination zone, as required by representative claim 41.

INDEPENDENT CLAIM 46

The issue before us is whether the Examiner erred in finding that Iwata discloses that a source zone and a destination zone execute separate copies of a topology distribution algorithm, as required by independent claim 46.

ANALYSIS

The Examiner finds that "Iwata discloses a source zone [= peer group and/or sub-network, 701] and a destination zone [= peer group and/or sub-network, 704] that execute separate copies of a topology distribution algorithm [= separate and/or different subnet may have separate topology, see fig.17]." (Ans. 9.)

"A rejection based on section 103 clearly must rest on a factual basis. . . ." *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). "The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis." *Id.*

Here, the Examiner's finding that Iwata's zones "may" have separate topologies amounts to speculation or unfounded assumption, neither of which is a proper bases for the rejection under section 103. We agree with the Appellants, moreover, that "there is no mention in the description of this figure (Iwata, 16:8-34) of the use of a 'subnet' with a 'separate topology,' as speculated . . . in the Examiner's Answer." (Reply Br. 26.)

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"The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art." *In re Lowry*, 32 F.3d 1579, 1582 (Fed. Cir. 1994) (citing *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983)).

Here, although the Appellants have not defined the claimed "topology distribution algorithm," the Examiner's finding does not explain how the limitation is allegedly taught or would have been suggested by Figure 17.

In an *ex parte* appeal, the Board "is basically a board of review — we review . . . rejections made by patent examiners." *Ex parte Gambogi*, 62 USPQ2d 1209, 1211 (BPAI 2001). "The review authorized by 35 U.S.C. Section 134 is not a process whereby the examiner . . . invite[s] the [B]oard to examine the application and resolve patentability in the first instance." *Ex parte Braeken*, 54 USPQ2d 1110, 1112 (BPAI 1999).

Here, the Examiner's citation to Figure 17, which contains nine steps, without focusing on any on the steps or explaining the relevance of the Figure, amounts to an invitation to the Board to examine the Figure and resolve its relevance in the first instance. We decline that invitation.

The Examiner does not allege, let alone show, that the addition of Houji or Ebata cures the aforementioned deficiency of Iwata. Therefore, we *conclude* that the Examiner erred in finding that Iwata identifies an intra-zone failure within at least one of a source zone and a destination zone, as required by representative claim 46.

DECISION

We affirm the rejection of claims 1 and 41 that of claims 2-40 and 42-44, which fall therewith.

In contrast, we reverse the rejection of claim 46.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

<u>AFFIRMED-IN-PART</u>

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